

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA


EDWARD R. FLYNN, et al,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
	:	
v.	:	No. 17-CV-04806-WB
	:	
MANUFACTURERS AND TRADES	:	
TRUST COMPANY	:	
	:	
Defendant	:	

**SUPPLEMENTAL REPORT OF PLAINTIFFS' E-DISCOVERY
LIAISON, STOTT MATTHEWS IN SUPPORT OF PLAINTIFF'S MOTION TO
COMPEL DISCOVERY AND IMPOSE SANCTIONS (Dkt. 103)**

To the Clerk:

Please file Plaintiffs' Supplemental Report of Plaintiffs' E-Discovery Liaison, Stott Matthews dated December 21, 2018 in support of Plaintiffs' Motion to Compel Discovery and Impose Sanctions (Dkt.103). As the Defendant has marked several Excel tables regarding the Plaintiff as "confidential," please file this document under Seal pursuant to the Court's Stipulated Confidentiality Order (Dkt. 22).

Respectfully submitted,
SHENKAN INJURY LAWYERS, LLC.


Richard Shenkan
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I do hereby certify that I caused a true and correct copy of this pleading was sent to all counsel for Defendant as all subscribe to the ECF.

Date: 1/24/18

SHENKAN INJURY LAWYERS, LLC.


Richard Shenkan





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December 21, 2018

RE: **Production of 24 Native Excel-Compatible Files (48 Pages w/ Plaintiffs' Data / Files Previously Produced as 17,886 TIFs)**

Dear Mr. Shenkan:

On May 11, 2018, the Defendant produced 17,993 separate TIF image pages ("TIF Production"). This production, as we only later learned, related to email of some as yet unknown number and named custodians. On December 5, 2018, pursuant to Court Order, Defendant then produced 24 Excel-compatible files (the "Excel Files") in their native format, ones previously produced as TIFs, though excluding certain metadata (hereafter "Excel Production"). The Excel Production comprised 99.4% of the total pages/files produced from the TIF Production. This Excel Production set could be easily printed on 48 pages. It contains content pertaining to Douglas Abbott and Catherine Hosick, but not the other two Representative Plaintiffs.

In the Bank's Opposition to Plaintiffs' Motion to Compel Discovery and Impose Sanctions (Dkt. 110, p. 16-17) and in its representation to Judge Lloret in a letter to the Court dated 10/15/18, the Defendant stated:

Despite Plaintiff's apparent disbelief, **the following facts are not in dispute**: There are approximately 3,946 potential members of the classes, 20% of which is 789 individuals. M & T's production relating solely to the **four named plaintiffs** yielded almost 19,000 pages (about 4,750 pages per plaintiff). By extrapolation, the same production for 789 more customers would yield just under **four million pages of documents**, which would undoubtably take **thousands of hours** of internal bank employee and outside counsel time to produce as each class member must be searched for **manually**. (Emphasis added)

It is my opinion that the highlighted text are not accurate and flawed for several reasons, based upon the Excel Production and my involvement in this case to date.

Inaccuracy #1
"Four Million Pages of Documents"

First, the Bank's statement that "four million pages of documents" would need to be produced for a 20% sample is inaccurate, as it is based on faulty data and a false premise of TIF-only production. This fact is shown by the examples below and summarized in the table in **Appendix A** (and is described in more detail below).

The first example is a printout of the native Excel-compatible file: "M&T020260 (previously produced

beginning at M&T001676).tsv.” The Bank originally produced this file as 6,325-pages of single file TIF images in the TIF Production. Like all other files in this production, most of the pages were blacked-out with redactions. This Excel file’s data relates to one named Plaintiff, Catherine Hosick and could have easily been presented in the 2-column x 13-row table shown below. This is one Excel page for 6,325 TIF pages (1:6,325 Page Ratio).

FullAccountnumber	FullName	CoBorrow	Address1	Address2	city	state	zipcode	SkipPayDueDate	HybridR escore	CurrentT erm	Propose dfee	Payment Amount
11000145007380000	CATHERINE HOSICK		PO BOX 482	*	CONNEAUT LAKE	PA	16316	1/1/2014 0:00	656	73	40	268.68

This table below presents the same data as above, however, with columns and their data transposed to rows for ease of viewing. I converted 9 of the 24 Excel files to a column format for easy viewing and printing, as seen in the format below.

FullAccountnumber	11000145007380000
FullName	CATHERINE HOSICK
CoBorrower	
Address1	PO BOX 482
Address2	*
city	CONNEAUT LAKE
state	PA
zipcode	16316
SkipPayDueDate	1/1/2014 0:00
HybridRescore	656
CurrentTerm	73
Proposedfee	40
PaymentAmount	268.68

The corresponding page ratio (Excel-based printout versus TIF pages/files) for the other Excel files are shown below. Note that the name of the Excel file appears at the top (or bottom) of the boxed print-range and the sheet/tab from the Excel file appears in the row beneath the file name. Also, note that the files were renamed with a "Spectrum" suffix to differentiate them from their non-print-formatted equivalents from the Defendant.

The Defendant produced 2,015 single-page, TIF-image files, instead of producing the following three pages of data (one page per sheet) in Excel format. (3:2,015 Page Ratio)

M&T020277 (previously produced beginning at M&T010655)-Spectrum.xlsm		
Auto & CGS Def Bal Data		
Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_LoanNo	11000145007380001	11900151400970001
Account_SHAWYear	2008	2005
Account_SHAWMake	FORD	FORD
Account_SHAWModel	FOCUS-4 CY	RANGER
Account_SHAWVIN	1FAHP35N98W144701	1FTZR45E85PA75732
Account_Balance	\$5,627.22	\$3,927.84
Account_SoldDate	7/28/2015	12/17/2015
Account_SoldAmount	\$2,100.00	\$4,500.00
MonthEnd	201507	201512
Account_CollValue	15696	3927
Product	Auto	Auto
VIN_Mileage	122903	127183
AccountBlackBook_Amount	4650	7700
FloorPrice_Amount	4100	5700
TotalExpense	1053.07	1566.78
DeficiencyBalance	5869.45	4153.73
SaleLocation	Adesa Buffalo	Central Penna Auto
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015 0:00	11/17/2015 0:00
DaysHeldFromSale		
VSIFundsReceived	124.22	0
Def-VSI	5745.23	4153.73
Account_PayoffAtSale	6916.38	7086.95
Account_BalanceAtSale	6674.15	6861.06

M&T020277 (previously produced beginning at M&T010655)-Spectrum.xlsm	
Gain on NoSales	
Year	2015
MonthEnd	201507
Customer	CATHERINE HOSICK
Account	11000145007380001
Make_Name	Ford
VIN_ModelName	FOCUS-4 CY
Account_FRB	LC3
VIN_Mileage	122903
Black Book Value	\$4,650.00
Floor Price	\$4,100.00
Sale Price	\$2,100.00
No Sale Bid Price	\$2,400.00
Sale Date	7/28/2015
No Sale Date	7/14/2015
Incremental Gain/Loss	-\$300.00
Days Until Sold	14
No Sale Type	No Sale
No Sale Reason	Low Bid
AuctionHouse_Name	Adesa Buffalo
Month_Name	Jul

M&T020277 (previously produced beginning at M&T010655)-Spectrum.xlsm		
Repo		
Account_LoanNo	11000145007380001	11900151400970001
Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_CollValue	\$15,696.00	\$3,927.00
Product	Auto	Auto
Account_SoldAmount	\$2,100.00	\$4,500.00
Account_Balance	\$5,627.22	\$3,927.84
SaleLocation	Adesa Buffalo	Central Penna Auto
Account_SoldDate	7/28/2015	12/17/2015
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015	11/17/2015
Account_OutForRepoDate	5/11/2015	11/10/2015
Account_RepossessedDate	5/19/2015	11/10/2015
DaysHeldFromRepo	0	0
MonthEnd	201505	201511
DaysAssignToRepo	8	0
NetDaysToRepo	8	0
Account_ReasonID	1	28

The Defendant produced 2,180 single page, TIF-image files instead of producing the following three pages of data (one page per sheet) in Excel format. (3:2,180 Page Ratio)

M&T020278 (previously produced beginning at M&T012697)-Spectrum.xlsm		
Auto & CGS Def Bal Data		
Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_LoanNo	11000145007380001	11900151400970001
Account_SHAWYear	2008	2005
Account_SHAWMake	FORD	FORD
Account_SHAWModel	FOCUS-4 CY	RANGER
Account_SHAWVIN	1FAHP35N98W144701	1FTZR45E85PA75732
Account_Balance	\$5,627.22	\$3,927.84
Account_SoldDate	7/28/2015	12/17/2015
Account_SoldAmount	\$2,100.00	\$4,500.00
MonthEnd	201507	201512
Account_CollValue	15696	3927
Product	Auto	Auto
VIN_Mileage	122903	127183
AccountBlackBook_Amount	4650	7700
FloorPrice_Amount	4100	5700
TotalExpense	1053.07	1566.78
DeficiencyBalance	5869.45	4153.73
SaleLocation	Adesa Buffalo	Central Penna Auto
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015 0:00	11/17/2015 0:00
DaysHeldFromSale		
VSIFundsReceived	124.22	0
Def-VSI	5745.23	4153.73
Account_PayoffAtSale	6916.38	7086.95
Account_BalanceAtSale	6874.15	6861.06

M&T020278 (previously produced beginning at M&T012697)-Spectrum.xlsm	
Gain on NoSales	
Year	2015
MonthEnd	201507
Customer	CATHERINE HOSICK
Account	11000145007380001
Make_Name	Ford
VIN_ModelName	FOCUS-4 CY
Account_FRB	LC3
VIN_Mileage	122903
Black Book Value	\$4,650.00
Floor Price	\$4,100.00
Sale Price	\$2,100.00
No Sale Bid Price	\$2,400.00
Sale Date	7/28/2015
No Sale Date	7/14/2015
Incremental Gain/Loss	-\$300.00
Days Until Sold	14
No Sale Type	No Sale
No Sale Reason	Low Bid
AuctionHouse_Name	Adesa Buffalo
Month_Name	Jul

M&T020278 (previously produced beginning at M&T012697)-Spectrum.xlsm		
Repo		
Account_LoanNo	11000145007380001	11900151400970001
Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_CollValue	\$15,696.00	\$3,927.00
Product	Auto	Auto
Account_SoldAmount	\$2,100.00	\$4,500.00
Account_Balance	\$5,627.22	\$3,927.84
SaleLocation	Adesa Buffalo	Central Penna Auto
Account_SoldDate	7/28/2015	12/17/2015
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015	11/17/2015
Account_OutForRepoDate	5/11/2015	11/10/2015
Account_RepossessedDate	5/19/2015	11/10/2015
DaysHeldFromRepo	0	0
MonthEnd	201505	201511
DaysAssignToRepo	8	0
NetDaysToRepo	8	0
Account_ReasonID	1	28

The Defendant produced 2,180 single TIF-image files instead of producing the following three tables of data (one page per sheet) in Excel format. (3:2,180 Page Ratio)

Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_LoanNo	11000145007380001	11900151400970001
Account_SHAWYear	2008	2005
Account_SHAWMake	FORD	FORD
Account_SHAWModel	FOCUS-4 CY	RANGER
Account_SHAWVIN	1FAHP35N98W144701	1FTZR45E85PA75732
Account_Balance	\$5,827.22	\$3,927.84
Account_SoldDate	7/28/2015	12/17/2015
Account_SoldAmount	\$2,100.00	\$4,500.00
MonthEnd	201507	201512
Account_CollValue	15696	3927
Product	Auto	Auto
VIN_Mileage	122903	127183
AccountBlackBook_Amount	4650	7700
FloorPrice_Amount	4100	5700
TotalExpense	1053.07	1566.78
DeficiencyBalance	5869.45	4153.73
SaleLocation	Adesa Buffalo	Central Penna Auto
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015 0:00	11/17/2015 0:00
DaysHeldFromSale		
VSIFundsReceived	124.22	0
Def-VSI	5745.23	4153.73
Account_PayoffAtSale	6916.38	7086.95
Account_BalanceAtSale	6674.15	6861.06

M&T020279 (previously produced beginning at M&T014906)-Spectrum.xlsm
Auto & CGS Def Bal Data

Year	2015
MonthEnd	201507
Customer	CATHERINE HOSICK
Account	11000145007380001
Make_Name	Ford
VIN_ModelName	FOCUS-4 CY
Account_FRB	LC3
VIN_Mileage	122903
Black Book Value	\$4,650.00
Floor Price	\$4,100.00
Sale Price	\$2,100.00
No Sale Bid Price	\$2,400.00
Sale Date	7/28/2015
No Sale Date	7/14/2015
Incremental Gain/Loss	-\$300.00
Days Until Sold	14
No Sale Type	No Sale
No Sale Reason	Low Bid
AuctionHouse_Name	Adesa Buffalo
Month_Name	Jul

M&T020279 (previously produced beginning at M&T014906)-Spectrum.xlsm
Gain on NoSales

Account_LoanNo	11000145007380001	11900151400970001
Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_CollValue	\$15,696.00	\$3,927.00
Product	Auto	Auto
Account_SoldAmount	\$2,100.00	\$4,500.00
Account_Balance	\$5,627.22	\$3,927.84
SaleLocation	Adesa Buffalo	Central Penna Auto
Account_SoldDate	7/28/2015	\$42,355.00
DaysRepoToSale	70	\$37.00
Account_ArrivedAtAuctionDate	5/27/2015	\$42,325.00
Account_OutForRepoDate	5/11/2015	\$42,318.47
Account_RepossessedDate	5/19/2015	\$42,318.00
DaysHeldFromRepo	0	\$0.00
MonthEnd	201505	201511
DaysAssignToRepo	8	\$0.00
NetDaysToRepo	8	\$0.00
Account_ReasonID	1	\$28.00
M&T020279 (previously produced beginning at M&T014906)-Spectrum.xlsm		
Repo		

The Defendant produced 2,200 single TIF-image files, instead of producing the following three tables of data (one page per sheet) in Excel format. (3:2,200 Page Ratio)

Account_PrimaryCustomerName	CATHERINE HOSICK	DOUG J ABBOTT
Account_LoanNo	11000145007380001	11900151400970001
Account_SHAWYear	2008	2005
Account_SHAWMake	FORD	FORD
Account_SHAWModel	FOCUS-4 CY	RANGER
Account_SHAWVIN	1FAHP35N98W14470	1FTZR45E85PA75732
Account_Balance	\$5,627.22	\$3,927.84
Account_SoldDate	7/28/2015	12/17/2015
Account_SoldAmount	\$2,100.00	\$4,500.00
MonthEnd	201507	201512
Account_CollValue	15696	3927
Product	Auto	Auto
VIN_Mileage	122903	127183
AccountBlackBook_Amount	4650	7700
FloorPrice_Amount	4100	5700
TotalExpense	1053.07	1566.78
DeficiencyBalance	5869.45	4153.73
SaleLocation	Adesa Buffalo	Central Penna Auto
DaysRepoToSale	70	37
Account_ArrivedAtAuctionDate	5/27/2015 0:00	11/17/2015 0:00
DaysHeldFromSale		
VSI FundsReceived	124.22	0
Def-VSI	5745.23	4153.73
Account_PayoffAtSale	6916.38	7086.95
Account_BalanceAtSale	6674.15	6861.06

M&T020280 (previously produced beginning at M&T017087)-Spectrum.xlsm
Auto & CGS Def Bal Data

Year	2015
MonthEnd	201507
Customer	CATHERINE HOSICK
Account	11000145007380001
Make_Name	Ford
VIN_ModelName	FOCUS-4 CY
Account_FRB	LC3
VIN_Mileage	122903
Black Book Value	\$4,650.00
Floor Price	\$4,100.00
Sale Price	\$2,100.00
No Sale Bid Price	\$2,400.00
Sale Date	7/28/2015
No Sale Date	7/14/2015
Incremental Gain/Loss	-\$300.00
Days Until Sold	14
No Sale Type	No Sale
No Sale Reason	Low Bid
AuctionHouse_Name	Adesa Buffalo
Month_Name	Jul

M&T020280 (previously produced beginning at M&T017087)-Spectrum.xlsm
Gain on NoSales

Account_LoanNo	11900151400970001
Account_PrimaryCustomerName	DOUG J ABBOTT
Account_CollValue	\$3,927.00
Product	Auto
Account_SoldAmount	\$4,500.00
Account_Balance	\$3,927.84
SaleLocation	Central Penna Auto
Account_SoldDate	12/17/2015
DaysRepoToSale	37
Account_ArrivedAtAuctionDate	11/17/2015
Account_OutForRepoDate	11/10/2015
Account_RepossessedDate	11/10/2015
DaysHeldFromRepo	0
MonthEnd	201511
DaysAssignToRepo	0
NetDaysToRepo	0
Account_ReasonID	28

M&T020280 (previously produced beginning at M&T017087)-Spectrum.xlsm
Repo

In summary, rather than produce the above 13 sheets of content (“Sheets w/Cont”) in Excel format in approximately 13 8½” x 11” pages, M&T Bank chose to produce them in 14,810 individual TIF pages, single-file image documents (requiring each page to be opened, whether using a litigation database or not). M&T Bank then used this highly inflated page count to incorrectly represent to this Honorable Court that the production of documents for a 20% sample of class members’ files would be unduly burdensome.

The remainder of the 3,076 pages (17,886 - 14,810) of the TIF Production, with the exception of the parent email messages themselves, was similarly exponentially larger than the equivalent amount of data produced in Excel format, as shown in the table attached in Appendix A. This table shows: (i) the Excel Production file name; (ii) the TIF Production page count of the file (in reddish highlights); (iii) the Excel Production number of files; (iv) the Excel sheet/tab count, and, (v) the Excel Production print-out page count for each file.

In reviewing the native Excel files formatted for printing (something I did, as the Excel files were not so prepared), the page count totals 48 pages. This 48-page printout for all 24 native Excel files compares dramatically to the fact that 99.4% of the original ~18,000-page TIF Production was comprised of these same Excel files totaling 17,886 pages of single-image TIF image files, vast majority of which were full-black redacted pages.

Inaccuracy #2 “Thousands of Hours”

I estimate that “redacting” these Excel files by deleting non-relevant rows of customers who are not the Representative Plaintiffs took, on average, between 15 and 30 minutes per Excel file. In total, then, only between six-to-twelve (6-12) hours would needed to complete the entire Excel Production in this manner. Even at one-hour per file, assuming all were multi-sheet files (which they are not), this totals 24 hours. In contrast, I can only imagine the time spent by the Bank and its agents to utilize the highly inefficient process actually deployed, one that consumed far more time than 24 hours; this same

highly inefficient process ultimately led to Defendant's flawed burdensome objection.

Inaccuracy #3

"Each class Member must be searched for manually"

If the capabilities of Excel are used effectively, 800 separate account numbers / names can be selected for each Excel report in roughly an hour's time. The search should be done electronically, not manually. Such an approach can and should be deployed similarly for quering the Bank's systems to export only a particular Class members' data. Conducting a manual search is highly inefficient and error prone and impractical in select-data-retrieval matters such as these.

Inaccuracy #4

"M & T's production relating solely to the four named Plaintiffs yielded almost 19,000 pages (about 4,750 pages per plaintiff)."

The Excel Production related only to Douglas Abbott and Catherine Hosick, not Gene Daisey nor Edward Flynn. I can confirm that neither the 23 parent email messages nor their 11 attachments relate to Daisey or Flynn, based on a text search of the searchable content from the May 11, 2018 "TIF Production". However, the Bank used an inaccurate premise that "four named plaintiffs yielded almost 9,000 pages" to extrapolate its "4 Million Pages of Documents" conclusion. This statement, then, also is not correct, as it is premised on inaccurate and/or incomplete information.

Inaccuracy #5

"Despite Plaintiff's apparent disbelief, the following facts are not in dispute"

As already noted, the "facts" Defendant's counsel are referencing are based on a flawed, TIF-only form of review, redaction, and production, especially as regards Excel-compatible files. It is worth noting that neither the Defendant nor any of its agents, including its counsel and its E-Discovery Liaison, ever consulted with me regarding the TIF Production for the Excel files, prior to its sending such to Plaintiff's counsel. This is despite Judge Beetlestone's model order regarding Excel files and database information.

Data which Remains Outstanding in the TIF Production

A. Metadata

The Defendant has yet to produce all metadata associated with the Excel Production and the TIF Production, as only bates-number DocIDs were included in the initial litigation-database load files, nothing more.

The issue was corrected, in part, on Friday, December 21, 2018, with the receipt of an email attachment named "Flynn- Metadata.csv". This contains the metadata commonly available and produced for the 24 Excel email attachments. It is unclear why the metadata for the other 10 attachments and the 23 parent email attachments was not produced in this same file. Requiring the Plaintiff to file a motion for the production of this other metadata continues in the unhelpful mode seen to date with the Defendant in terms of discovery.

For the TIF and Excel Production, the metadata not yet provided has already been extracted from the source mailbox files (the Outlook PST/OST files which Alex Wilshaw sent to Richard Kaminski /

Avalon Document Services / Richard Kaminski, the Bank's e-discovery E-Discovery Liaison. (Hrg. Tr. p. 121-124)). This data already exists in the litigation database used/accessed by the Bank's counsel and exporting such data is commonly done.

For the parent message, this metadata would include the User's Mailbox (the "Custodian"), its folder location, Subject, From, To, CC, BCC, Sent date/time, attachment listing, etc. For any attachment, this metadata would at least include the file's name and its extension. The document identification ("Doc ID") of an attachment's parent is the only piece of metadata included in the original TIF Production set. No other metadata of the kind described above has been provided.

Producing this metadata is an easy task which should take approximately no more than an hour or so to export and is commonly performed in litigation. I would ask that the Defendants produce the metadata for all the remaining documents produced in the TIF production, so that it is clear what type of document is being reviewed, among other pertinent information provided by the metadata.

B. Other Documents in TIF Production

There are a total of 107 TIF images, representing 33 documents, which the Defendant has yet to produce in their native format. The details of these (and the other) documents are set forth in Appendix B. The total TIF Production entailed 17,993 TIF images, representing 57 total documents. Only 24 of these files had been provided in their native format in the Excel Production though, as explained above, without all of the metadata (though this was corrected on December 21, 2018 as noted above for the Excel files). Additionally, what has yet to be provided in native format are: 10 files representing 81 TIF images whose native format is unknown, as referenced by "TBD" ("To-Be-Determined") and 23 files represented by 26 TIF images which are parent e-mail messages, referenced by "Par. Msg."

In conclusion, the Bank stated in its Response in Opposition to Plaintiffs' Memorandum Discussing Substantive Objections to Tentative Rulings (Dkt. 141, p. 1) that:

Plaintiffs have taken every opportunity to increase the costs of defending this action, for example by repeatedly briefing issues that have already been decided, seeking sanction for conduct that is well-accepted as a standard practice M & T is confident that Plaintiffs' claims lack merit, is more than willing to produce the information that bears that out, and has in fact been doing just that for many months. (p. 1)

In my opinion and as seen above, these statements are clearly not supported by the analysis presented in this Declaration.

To date, I understand that the Defendant has not presented evidence to substantiate its undue burdensome objections, other than to state that printing the Plaintiffs' screen shots and their monthly statements are purportedly burdensome. (Hearing Transcript, p. 135-6).¹ Certainly I can agree that this is not likely the methodology to deploy to obtain at least the majority of relevant data from the Bank's

¹ I understand that Plaintiff's counsel does not need the monthly statements of any class member selected to be in the Sample. Furthermore, the screenshot information is likely stored natively in some database format and should be easily retrieved electronically. The production of the software manuals and the proposed remote access and deposition should help to establish and understand this.

systems.

My analysis shows how deeply flawed Defendant's methodology was in treating the redaction and production of the Excel files. In my role as an E-Discovery Liaison, I submit that I should not infer ill motives for this, but it certainly (i) artificially inflated the document production volume, time, and cost and (ii) lacks any merit in terms of advancing an unduly burdensome objection. Plaintiff's counsel had to incur a significant cost in time and money to review and analyze the Bank's faulty production sets.²

If the Defendant simply followed Judge Beetlestone's December 4, 2017 model electronic discovery order (Dkt. 17) and the Stipulated Discovery Confidentiality Order (Dkt. 22), the Bank could have produced no more than 48 pages of Excel-compatible files, resulting from a task which would have taken no more than between 12 and 24 hours.

Instead, the Defendant converted the 24 Excel files into 17,886 separate TIF files/pages, the vast majority of which were then redacted as completely black pages. The Bank's highly inefficient conversion/review/redaction process served as the basis for its flawed conclusions in the paragraph cited on page 1 above (Response to Plaintiff's First Set of Post-Removal Discovery, p. 15-16 and its 10/15/18 letter to Judge Lloret).

It is also important to note that the Bank's contention that its efforts were needed to protect customers' confidentiality is not accurate; the Excel content presented only relates to select class members, Catherine Hosick and Douglas Abbott, no one else. If the Bank or its agents had consulted with me, I would have suggested that, with the Court's approval, redacting non-class members' data by row deletion in Excel; this is a highly efficient and effective methodology. This, then, would have removed this faulty-premised objection/contention.

Similarly, the Bank's statements that the identification process requires a manual search is flawed, as names of customers or account numbers can be identified or tagged (i) via formula or filter in Excel or (ii) targeted query of the Bank's systems in an efficient and robust manner.

As noted previously and stated in my Court testimony, I have read and/or witnessed discovery abuses and failures such as this. During my e-discovery practice of more nearly 15 years and my work as Co-Chair of the Litigation Technology/Social Media Committee for the United States District Court for the Eastern District of Michigan, the Bank's practices and conduct to date rise as a top contender in terms of a failed and uncooperative discovery effort, especially in light of common, current practice in E-Discovery, the Sedona Conference guidelines, and case law.

I state these opinions within a reasonable degree of professional certainty. I remain available to discuss these or any other technical matters with M&T Bank representatives and/or the Court and to participate in a meet-and-confer regarding any discovery matter.

² To date, I attribute roughly 60 hours of my time to assisting Plaintiff's counsel to expose these discovery issues, including the time involving my analysis of the TIF / Excel Production of December 5, 2018. I have billed Plaintiff's counsel a total over \$16,000 for these avoidable efforts.

Yours truly,

A handwritten signature in blue ink, appearing to read "J. Stott Matthews", with a stylized, cursive script.

J. Stott Matthews

Note that the one .tsv (tab-separated values) and two .csv (comma-separated values) files are Excel-compatible files, meaning that they can be opened in Excel, among other applications. They are not default Excel file types (e.g. files with extensions beginning with ".xl").

Ctrl	Orig Doc ID	New Doc ID	File Name	File Ext	File Cmt	TIF Pg #	Native Excel - Dec-2018 Production	Sheets w/Cont	Print Pg Cmt
1	M&T001676	M&T020260	M&T020260 (previously produced beginning at M&T001676).tsv	tsv	6,235	1	1	1	1
2	M&T007920	M&T020261	M&T020261 (previously produced beginning at M&T007920).xlsx	xlsx	124	1	1	1	1
3	M&T008045	M&T020262	M&T020262 (previously produced beginning at M&T008045).xls	xls	14	1	1	1	1
4	M&T008060	M&T020263	M&T020263 (previously produced beginning at M&T008060).xls	xls	14	1	1	1	1
5	M&T008075	M&T020264	M&T020264 (previously produced beginning at M&T008075).xlsx	xlsx	124	1	1	1	1
6	M&T008200	M&T020265	M&T020265 (previously produced beginning at M&T008200).xlt	xlt	487	1	1	1	1
7	M&T008668	M&T020266	M&T020266 (previously produced beginning at M&T008668).csv	csv	74	1	1	1	1
8	M&T008742	M&T020267	M&T020267 (previously produced beginning at M&T008742).csv	csv	5	1	1	1	1
9	M&T008748	M&T020268	M&T020268 (previously produced beginning at M&T008748).xlsx	xlsx	473	1	1	1	1
10	M&T008223	M&T020269	M&T020269 (previously produced beginning at M&T008223).xlsx	xlsx	104	1	1	1	1
11	M&T009328	M&T020270	M&T020270 (previously produced beginning at M&T009328).xlt	xlt	469	1	1	1	1
12	M&T009788	M&T020271	M&T020271 (previously produced beginning at M&T009788).xlt	xlt	469	1	1	1	1
13	M&T010268	M&T020272	M&T020272 (previously produced beginning at M&T010268).xls	xls	20	1	1	1	1
14	M&T010289	M&T020273	M&T020273 (previously produced beginning at M&T010289).xls	xls	110	1	1	1	1
15	M&T010400	M&T020274	M&T020274 (previously produced beginning at M&T010400).xlsx	xlsx	109	1	1	1	1
16	M&T010511	M&T020275	M&T020275 (previously produced beginning at M&T010511).xlsx	xlsx	45	1	1	1	1
17	M&T010556	M&T020276	M&T020276 (previously produced beginning at M&T010556).xlsx	xlsx	88	1	1	1	1
18	M&T010655	M&T020277	M&T020277 (previously produced beginning at M&T010655).xlsx	xlsx	2,015	1	1	1	1
19	M&T012697	M&T020278	M&T020278 (previously produced beginning at M&T012697).xlsx	xlsx	2,180	1	1	1	1
20	M&T014906	M&T020279	M&T020279 (previously produced beginning at M&T014906).xlsx	xlsx	2,180	1	1	1	1
21	M&T017087	M&T020280	M&T020280 (previously produced beginning at M&T017087).xslm	xslm	2,200	1	1	1	1
22	M&T018309	M&T020281	M&T020281 (previously produced beginning at M&T018309).xlsx	xlsx	119	1	1	1	1
23	M&T019429	M&T020282	M&T020282 (previously produced beginning at M&T019429).xlsx	xlsx	119	1	1	1	1
24	M&T019549	M&T020283	M&T020283 (previously produced beginning at M&T019549).xlsx	xlsx	119	1	1	1	1
Totals						17,886	24	38	48

Appendix A: Table Showing Native Excel File Metrics versus their TIF Production

Appendix B: Breakdown of Documents by Type – ~18,000 TIF Email Production

Start #	Begin Bates	Pg Cnt	Msg?	Document Count				Page Count		
				Doc Cntr	Par Msg	Excel?	TBD Att	Par Msg	Excel Att	TBD Att
1675	M&T001675	1	Par Msg	1	1	-	-	1	-	-
1676	M&T001676	6,235	Excel Att	1	-	1	-	-	6,235	-
7911	M&T007911	1	Par Msg	1	1	-	-	1	-	-
7912	M&T007912	1	TBD Att	1	-	-	1	-	-	1
7913	M&T007913	1	TBD Att	1	-	-	1	-	-	1
7914	M&T007914	5	TBD Att	1	-	-	1	-	-	5
7919	M&T007919	1	Par Msg	1	1	-	-	1	-	-
7920	M&T007920	124	Excel Att	1	-	1	-	-	124	-
8044	M&T008044	1	Par Msg	1	1	-	-	1	-	-
8045	M&T008045	14	Excel Att	1	-	1	-	-	14	-
8059	M&T008059	1	Par Msg	1	1	-	-	1	-	-
8060	M&T008060	14	Excel Att	1	-	1	-	-	14	-
8074	M&T008074	1	Par Msg	1	1	-	-	1	-	-
8075	M&T008075	124	Excel Att	1	-	1	-	-	124	-
8199	M&T008199	1	Par Msg	1	1	-	-	1	-	-
8200	M&T008200	467	Excel Att	1	-	1	-	-	467	-
8667	M&T008667	1	Par Msg	1	1	-	-	1	-	-
8668	M&T008668	74	Excel Att	1	-	1	-	-	74	-
8742	M&T008742	5	Excel Att	1	-	1	-	-	5	-
8747	M&T008747	1	Par Msg	1	1	-	-	1	-	-
8748	M&T008748	473	Excel Att	1	-	1	-	-	473	-
9221	M&T009221	2	Par Msg	1	1	-	-	2	-	-
9223	M&T009223	104	Excel Att	1	-	1	-	-	104	-
9327	M&T009327	1	Par Msg	1	1	-	-	1	-	-
9328	M&T009328	469	Excel Att	1	-	1	-	-	469	-
9797	M&T009797	1	Par Msg	1	1	-	-	1	-	-
9798	M&T009798	469	Excel Att	1	-	1	-	-	469	-
10267	M&T010267	1	Par Msg	1	1	-	-	1	-	-
10268	M&T010268	20	Excel Att	1	-	1	-	-	20	-
10288	M&T010288	1	Par Msg	1	1	-	-	1	-	-
10289	M&T010289	110	Excel Att	1	-	1	-	-	110	-
10399	M&T010399	1	Par Msg	1	1	-	-	1	-	-
10400	M&T010400	109	Excel Att	1	-	1	-	-	109	-
10509	M&T010509	2	Par Msg	1	1	-	-	2	-	-
10511	M&T010511	45	Excel Att	1	-	1	-	-	45	-
10556	M&T010556	98	Excel Att	1	-	1	-	-	98	-
10654	M&T010654	1	Par Msg	1	1	-	-	1	-	-
10655	M&T010655	2,015	Excel Att	1	-	1	-	-	2,015	-
12670	M&T012670	21	TBD Att	1	-	-	1	-	-	21
12691	M&T012691	3	TBD Att	1	-	-	1	-	-	3
12694	M&T012694	2	TBD Att	1	-	-	1	-	-	2
12696	M&T012696	1	Par Msg	1	1	-	-	1	-	-
12697	M&T012697	2,180	Excel Att	1	-	1	-	-	2,180	-
14877	M&T014877	21	TBD Att	1	-	-	1	-	-	21
14898	M&T014898	3	TBD Att	1	-	-	1	-	-	3
14901	M&T014901	3	TBD Att	1	-	-	1	-	-	3
14904	M&T014904	2	Par Msg	1	1	-	-	2	-	-
14906	M&T014906	2,180	Excel Att	1	-	1	-	-	2,180	-
17086	M&T017086	1	Par Msg	1	1	-	-	1	-	-
17087	M&T017087	2,200	Excel Att	1	-	1	-	-	2,200	-
19287	M&T019287	21	TBD Att	1	-	-	1	-	-	21
19308	M&T019308	1	Par Msg	1	1	-	-	1	-	-
19309	M&T019309	119	Excel Att	1	-	1	-	-	119	-
19428	M&T019428	1	Par Msg	1	1	-	-	1	-	-
19429	M&T019429	119	Excel Att	1	-	1	-	-	119	-
19548	M&T019548	1	Par Msg	1	1	-	-	1	-	-
19549	M&T019549	119	Excel Att	1	-	1	-	-	119	-
19667										
		17,993		57	23	24	10	26	17,886	81
									99.4%	